

Appendix A
Watershed Management Act (Chapter 90.82 RCW),
As Amended in 2001 Legislative Session

CHAPTER 90.82 RCW

WATERSHED PLANNING

(Formerly: Water resource management)

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RCW 90.82.005 Purpose. The purpose of this chapter is to develop a more thorough and cooperative method of determining what the current water resource situation is in each water resource inventory area of the state and to provide local citizens with the maximum possible input concerning their goals and objectives for water resource management and development.

It is necessary for the legislature to establish processes and policies that will result in providing state agencies with more specific guidance to manage the water resources of the state consistent with current law and direction provided by local entities and citizens through the process established in accordance with this chapter. [1997 c 442 § 101.]

RCW 90.82.010 Finding. The legislature finds that the local development of watershed plans for managing water resources and for protecting existing water rights is vital to both state and local interests. The local development of these plans serves vital local interests by placing it in the hands of people: Who have the greatest knowledge of both the resources and the aspirations of those who live and work in the watershed; and who have the greatest stake in the proper, long-term management of the resources. The development of such plans serves the state's vital interests by ensuring that the state's water resources are used wisely, by protecting existing water rights, by protecting instream flows for fish, and by providing for the economic well-being of the state's citizenry and communities. Therefore, the legislature believes it necessary for units of local government throughout the state to engage in the orderly development of these watershed plans. [1997 c 442 § 102.]

RCW 90.82.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

- (1) "Department" means the department of ecology.
- (2) "Implementing rules" for a WRIA plan are the rules needed to give force and effect to the parts of the plan that create rights or obligations for any party including a state agency or that establish water management policy.
- (3) "Minimum instream flow" means a minimum flow under chapter 90.03 or 90.22 RCW or a base flow under chapter 90.54 RCW.
- (4) "WRIA" means a water resource inventory area established in chapter 173-500 WAC as it existed on January 1, 1997.
- (5) "Water supply utility" means a water, combined water-sewer, irrigation, reclamation, or public utility district that provides water to persons or other water users within the district or a division or unit responsible for administering a publicly governed water supply system on behalf of a county.
- (6) "WRIA plan" or "plan" means the product of the planning unit including any rules adopted in conjunction with the product of the planning unit. [1997 c 442 § 103.]

RCW 90.82.030 Principles. In order to have the best possible program for appropriating and administering water use in the state, the legislature establishes the following principles and criteria to carry out the purpose and intent of chapter 442, Laws of 1997.

- (1) All WRIA planning units established under this chapter shall develop a process to assure that water resource user interests and directly involved interest groups at the local level have the opportunity, in a fair and equitable manner, to give input and direction to the process.
- (2) If a planning unit requests technical assistance from a state agency as part of its planning activities under this chapter and the assistance is with regard to a subject matter over which the agency has jurisdiction, the state agency shall provide the technical assistance to the planning unit.
- (3) Plans developed under chapter 442, Laws of 1997 shall be consistent with and not duplicative of efforts already under way in a WRIA, including but not limited to watershed analysis conducted under state forest practices statutes and rules. [1997 c 442 § 104.]

RCW 90.82.040 WRIA planning units--Watershed planning grants--Eligibility criteria--Administrative costs. (1) Once a WRIA planning unit has been initiated under RCW 90.82.060 and a lead agency has been designated, it shall notify the department and may apply to the department for funding assistance for conducting the planning. Funds shall be provided from

and to the extent of appropriations made by the legislature to the department expressly for this purpose.

(2)(a) Each planning unit that has complied with subsection (1) of this section is eligible to receive watershed planning grants in the following amounts for three phases of watershed planning:

(i) Initiating governments may apply for an initial organizing grant of up to fifty thousand dollars for a single WRIA or up to seventy-five thousand dollars for a multi-WRIA management area in accordance with RCW 90.82.060(4);

(ii)(A) A planning unit may apply for up to two hundred thousand dollars for each WRIA in the management area for conducting watershed assessments in accordance with RCW 90.82.070, except that a planning unit that chooses to conduct a detailed assessment or studies under (a)(ii)(B) of this subsection or whose initiating governments choose or have chosen to include an instream flow or water quality component in accordance with RCW 90.82.080 or 90.82.090 may apply for up to one hundred thousand additional dollars for each instream flow and up to one hundred thousand additional dollars for each water quality component included for each WRIA to conduct an assessment on that optional component and for each WRIA in which the assessments or studies under (a)(ii)(B) of this subsection are conducted.

(B) A planning unit may elect to apply for up to one hundred thousand additional dollars to conduct a detailed assessment of multipurpose water storage opportunities or for studies of specific multipurpose storage projects which opportunities or projects are consistent with and support the other elements of the planning unit's watershed plan developed under this chapter; and

(iii) A planning unit may apply for up to two hundred fifty thousand dollars for each WRIA in the management area for developing a watershed plan and making recommendations for actions by local, state, and federal agencies, tribes, private property owners, private organizations, and individual citizens, including a recommended list of strategies and projects that would further the purpose of the plan in accordance with RCW 90.82.060 through 90.82.100.

(b) A planning unit may request a different amount for phase two or phase three of watershed planning than is specified in (a) of this subsection, provided that the total amount of funds awarded do not exceed the maximum amount the planning unit is eligible for under (a) of this subsection. The department shall approve such an alternative allocation of funds if the planning unit identifies how the proposed alternative will meet the goals of this chapter and provides a proposed timeline for the completion of planning. However, the up to one hundred thousand additional dollars in funding for instream flow and water quality components and for water storage assessments or studies that a planning unit may apply for under (a)(ii)(A) of this subsection may be used only for those instream flow, water quality, and water storage purposes.

(c) By December 1, 2001, or within one year of initiating phase one of watershed planning, whichever occurs later, the initiating governments for each planning unit must inform the department whether they intend to have the planning unit establish or amend instream flows as part of its planning process. If they elect to have the planning unit establish or amend instream flows, the planning unit is eligible to receive one hundred thousand dollars for that purpose in accordance with (a)(ii) of this subsection. If the initiating governments for a planning unit elect not to establish or amend instream flows as part of the unit's planning process, the department shall retain one hundred thousand dollars to carry out an assessment to support establishment of instream flows and to establish such flows in accordance with RCW 90.54.020(3)(a) and chapter 90.22 RCW. The department shall not use these funds to amend an existing instream flow unless requested to do so by the initiating governments for a planning unit.

(d) In administering funds appropriated for supplemental funding for optional plan components under (a)(ii) of this subsection, the department shall give priority in granting the available funds to proposals for setting or amending instream flows.

(3)(a) The department shall use the eligibility criteria in this subsection (3) instead of rules, policies, or guidelines when evaluating grant applications at each stage of the grants program.

(b) In reviewing grant applications under this subsection (3), the department shall evaluate whether:

(i) The planning unit meets all of the requirements of this chapter;
(ii) The application demonstrates a need for state planning funds to accomplish the objectives of the planning process; and

(iii) The application and supporting information evidences a readiness to proceed.

(c) In ranking grant applications submitted at each stage of the grants program, the department shall give preference to applications in the following order of priority:

(i) Applications from existing planning groups that have been in existence for at least one year;

(ii) Applications that address protection and enhancement of fish habitat in watersheds that have aquatic fish species listed or proposed to be listed as endangered or threatened under the federal endangered species act, 16 U.S.C. Sec. 1531 et seq. and for which there is evidence of an inability to supply adequate water for population and economic growth from:

(A) First, multi-WRIA planning; and

(B) Second, single WRIA planning;

(iii) Applications that address protection and enhancement of fish habitat in watersheds or for which there is evidence of an inability to supply adequate water for population and economic growth from:

(A) First, multi-WRIA planning; and

(B) Second, single WRIA planning.

(d) The department may not impose any local matching fund requirement as a condition for grant eligibility or as a preference for receiving a grant.

(4) The department may retain up to one percent of funds allocated under this section to defray administrative costs.

(5) Planning under this chapter should be completed as expeditiously as possible, with the focus being on local stakeholders cooperating to meet local needs.

(6) Funding provided under this section shall be considered a contractual obligation against the moneys appropriated for this purpose. [2001 c 237 § 2; 1998 c 247 § 1; 1997 c 442 § 105.]

NOTES:

Finding--Intent--2001 c 237: "The legislature is committed to meeting the needs of a growing population and a healthy economy statewide; to meeting the needs of fish and healthy watersheds statewide; and to advancing these two principles together, in increments over time.

The legislature finds that improved management of the state's water resources, clarifying the authorities, requirements, and timelines for establishing instream flows, providing timely decisions on water transfers, clarifying the authority of water conservancy boards, and enhancing the flexibility of our water management system to meet both environmental and economic goals are important steps to providing a better future for our state.

The need for these improvements is particularly urgent as we are faced with drought conditions. The failure to act now will only increase the potential negative effects on both the economy and the environment, including fisheries resources.

Deliberative action over several legislative sessions and interim periods between sessions will be required to address the long-term goal of improving the responsiveness of the state water code to meet the diverse water needs of the state's citizenry. It is the intent of the legislature to begin this work now by providing tools to enable the state to respond to imminent drought conditions and other immediate problems relating to water resources management. It is also the legislature's intent to lay the groundwork for future legislation for addressing the state's long-term water problems." [2001 c 237 § 1.]

Severability--2001 c 237: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 c 237 § 33.]

Effective date--2001 c 237: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 10, 2001]." [2001 c 237 § 34.]

Intent--2001 c 237: See note following RCW 90.66.065.

RCW 90.82.050 Limitations on liability. (1) This chapter shall not be construed as creating a new cause of action against the state or any county, city, town, water supply utility, conservation district, or planning unit.

(2) Notwithstanding RCW 4.92.090, 4.96.010, and 64.40.020, no claim for damages may be filed against the state or any county, city, town, water supply utility, tribal governments, conservation district, or planning unit that or member of a planning unit who participates in a WRIA planning unit for performing responsibilities under this chapter. [1997 c 442 § 106.]

RCW 90.82.060 Initiation of watershed planning--Scope of planning--Technical assistance from state agencies. (1) Planning conducted under this chapter must provide for a process to allow the local citizens within a WRIA or multi-WRIA area to join together in an effort to: (a) Assess the status of the water resources of their WRIA or multi-WRIA area; and (b) determine how best to manage the water resources of the WRIA or multi-WRIA area to balance the competing resource demands for that area within the parameters under RCW 90.82.120.

(2) Watershed planning under this chapter may be initiated for a WRIA only with the concurrence of: (a) All counties within the WRIA; (b) the largest city or town within the WRIA unless the WRIA does not contain a city or town; and (c) the water supply utility obtaining the largest quantity of water from the WRIA or, for a WRIA with lands within the Columbia Basin project, the water supply utility obtaining from the Columbia Basin project the largest quantity of water for the WRIA. To apply for a grant for organizing the planning unit as provided for under RCW 90.82.040(2)(a), these entities shall designate the entity that will serve as the lead agency for the planning effort and indicate how the planning unit will be staffed.

(3) Watershed planning under this chapter may be initiated for a multi-WRIA area only with the concurrence of: (a) All counties within the multi-WRIA area; (b) the largest city or town in each WRIA unless the WRIA does not contain a city or town; and (c) the water supply utility obtaining the largest quantity of water in each WRIA.

(4) If entities in subsection (2) or (3) of this section decide jointly and unanimously to proceed, they shall invite all tribes with reservation lands within the management area.

(5) The entities in subsection (2) or (3) of this section, including the tribes if they affirmatively accept the invitation, constitute the initiating governments for the purposes of this section.

(6) The organizing grant shall be used to organize the planning unit and to determine the scope of the planning to be conducted. In determining the scope of the planning activities, consideration shall be given to all existing plans and related planning activities. The scope of planning must include water quantity elements as provided in RCW 90.82.070, and may include water quality elements as contained in RCW 90.82.090, habitat elements as contained in RCW 90.82.100, and instream flow elements as contained in RCW 90.82.080. The initiating governments

shall work with state government, other local governments within the management area, and affected tribal governments, in developing a planning process. The initiating governments may hold public meetings as deemed necessary to develop a proposed scope of work and a proposed composition of the planning unit. In developing a proposed composition of the planning unit, the initiating governments shall provide for representation of a wide range of water resource interests.

(7) Each state agency with regulatory or other interests in the WRIA or multi-WRIA area to be planned shall assist the local citizens in the planning effort to the greatest extent practicable, recognizing any fiscal limitations. In providing such technical assistance and to facilitate representation on the planning unit, state agencies may organize and agree upon their representation on the planning unit. Such technical assistance must only be at the request of and to the extent desired by the planning unit conducting such planning. The number of state agency representatives on the planning unit shall be determined by the initiating governments in consultation with the governor's office.

(8) As used in this section, "lead agency" means the entity that coordinates staff support of its own or of other local governments and receives grants for developing a watershed plan. [2001 c 229 § 1; 1998 c 247 § 2.]

RCW 90.82.070 Water quantity component. Watershed planning under this chapter shall address water quantity in the management area by undertaking an assessment of water supply and use in the management area and developing strategies for future use.

(1) The assessment shall include:

(a) An estimate of the surface and ground water present in the management area;

(b) An estimate of the surface and ground water available in the management area, taking into account seasonal and other variations;

(c) An estimate of the water in the management area represented by claims in the water rights claims registry, water use permits, certificated rights, existing minimum instream flow rules, federally reserved rights, and any other rights to water;

(d) An estimate of the surface and ground water actually being used in the management area;

(e) An estimate of the water needed in the future for use in the management area;

(f) An identification of the location of areas where aquifers are known to recharge surface bodies of water and areas known to provide for the recharge of aquifers from the surface; and

(g) An estimate of the surface and ground water available for further appropriation, taking into account the minimum instream flows adopted by rule or to be adopted by rule under this chapter for streams in the management area including the data necessary to evaluate necessary flows for fish.

(2) Strategies for increasing water supplies in the management area, which may include, but are not limited to, increasing water supplies through water conservation, water reuse, the use of reclaimed water, voluntary water transfers, aquifer recharge and recovery, additional water allocations, or additional water storage and water storage enhancements. The objective of these strategies is to supply water in sufficient quantities to satisfy the minimum instream flows for fish and to provide water for future out-of-stream uses for water identified in subsection (1)(e) and (g) of this section and to ensure that adequate water supplies are available for agriculture, energy production, and population and economic growth under the requirements of the state's growth management act, chapter 36.70A RCW. These strategies, in and of themselves, shall not be construed to confer new water rights. The watershed plan must address the strategies required under this subsection.

(3) The assessment may include the identification of potential site locations for water storage projects. The potential site locations may be for either large or small projects and cover the

full range of possible alternatives. The possible alternatives include off-channel storage, underground storage, the enlargement or enhancement of existing storage, and on-channel storage. [2001 2nd sp.s. c 19 § 2; 1998 c 247 § 3.]

NOTES:

Intent--2001 2nd sp.s. c 19: "The legislature recognizes the potential for additional water storage as a solution to the water supply needs of the state. Last year the legislature created a task force to examine the role of increased water storage in providing water supplies to meet the needs of fish, population growth, and economic development, and to enhance the protection of people's lives and their property and the protection of aquatic habitat through flood control facilities. One solution discussed by the task force to address the state's water supply problem is to store water when there is excess runoff and stream flow, and deliver or release it during the low flow period when it is needed. The task force discussed the need for assessments of potential site locations for water storage projects. The legislature intends this act to assist in obtaining the assessments relating to water storage." [2001 2nd sp.s. c 19 § 1.]

RCW 90.82.080 Instream flow component--Rules. (1)(a) If the initiating governments choose, by majority vote, to include an instream flow component, it shall be accomplished in the following manner:

(i) If minimum instream flows have already been adopted by rule for a stream within the management area, unless the members of the local governments and tribes on the planning unit by a recorded unanimous vote request the department to modify those flows, the minimum instream flows shall not be modified under this chapter. If the members of local governments and tribes request the planning unit to modify instream flows and unanimous approval of the decision to modify such flow is not achieved, then the instream flows shall not be modified under this section;

(ii) If minimum stream flows have not been adopted by rule for a stream within the management area, setting the minimum instream flows shall be a collaborative effort between the department and members of the planning unit. The department must attempt to achieve consensus and approval among the members of the planning unit regarding the minimum flows to be adopted by the department. Approval is achieved if all government members and tribes that have been invited and accepted on the planning unit present for a recorded vote unanimously vote to support the proposed minimum instream flows, and all nongovernmental members of the planning unit present for the recorded vote, by a majority, vote to support the proposed minimum instream flows.

(b) The department shall undertake rule making to adopt flows under (a) of this subsection. The department may adopt the rules either by the regular rules adoption process provided in chapter 34.05 RCW, the expedited rules adoption process as set forth in *RCW 34.05.230, or through a rules adoption process that uses public hearings and notice provided by the county legislative authority to the greatest extent possible. Such rules do not constitute significant legislative rules as defined in RCW 34.05.328, and do not require the preparation of small business economic impact statements.

(c) If approval is not achieved within four years of the date the planning unit first receives funds from the department for conducting watershed assessments under RCW 90.82.040, the department may promptly initiate rule making under chapter 34.05 RCW to establish flows for those streams and shall have two additional years to establish the instream flows for those streams for which approval is not achieved.

(2)(a) Notwithstanding RCW 90.03.345, minimum instream flows set under this section for rivers or streams that do not have existing minimum instream flow levels set by rule of the department shall have a priority date of two years after funding is first received from the department

under RCW 90.82.040, unless determined otherwise by a unanimous vote of the members of the planning unit but in no instance may it be later than the effective date of the rule adopting such flow.

(b) Any increase to an existing minimum instream flow set by rule of the department shall have a priority date of two years after funding is first received for planning in the WRIA or multi-WRIA area from the department under RCW 90.82.040 and the priority date of the portion of the minimum instream flow previously established by rule shall retain its priority date as established under RCW 90.03.345.

(c) Any existing minimum instream flow set by rule of the department that is reduced shall retain its original date of priority as established by RCW 90.03.345 for the revised amount of the minimum instream flow level.

(3) Before setting minimum instream flows under this section, the department shall engage in government-to-government consultation with affected tribes in the management area regarding the setting of such flows.

(4) Nothing in this chapter either: (a) Affects the department's authority to establish flow requirements or other conditions under RCW 90.48.260 or the federal clean water act (33 U.S.C. Sec. 1251 et seq.) for the licensing or relicensing of a hydroelectric power project under the federal power act (16 U.S.C. Sec. 791 et seq.); or (b) affects or impairs existing instream flow requirements and other conditions in a current license for a hydroelectric power project licensed under the federal power act.

(5) If the planning unit is unable to obtain unanimity under subsection (1) of this section, the department may adopt rules setting such flows. [1998 c 247 § 4.]

NOTES:

***Reviser's note:** RCW 34.05.230 was amended by 2001 c 25 § 1, deleting the text that refers to expedited rules adoption. For expedited rules adoption, see RCW 34.05.353.

RCW 90.82.085 Instream flows--Assessing and setting or amending. By October 1, 2001, the department of ecology shall complete a final nonproject environmental impact statement that evaluates stream flows to meet the alternative goals of maintaining, preserving, or enhancing instream resources and the technically defensible methodologies for determining these stream flows. Planning units and state agencies assessing and setting or amending instream flows must, as a minimum, consider the goals and methodologies addressed in the nonproject environmental impact statement. A planning unit or state agency may assess, set, or amend instream flows in a manner that varies from the final nonproject environmental impact statement if consistent with applicable instream flow laws. [2001 c 237 § 3.]

NOTES:

Finding--Intent--Severability--Effective date--2001 c 237: See notes following RCW 90.82.040.

Intent--2001 c 237: See note following RCW 90.66.065.

RCW 90.82.090 Water quality component. If the initiating governments choose to include a water quality component, the watershed plan shall include the following elements:

(1) An examination based on existing studies conducted by federal, state, and local agencies of the degree to which legally established water quality standards are being met in the management area;

(2) An examination based on existing studies conducted by federal, state, and local agencies of the causes of water quality violations in the management area, including an examination of information regarding pollutants, point and nonpoint sources of pollution, and pollution-carrying capacities of water bodies in the management area. The analysis shall take into account seasonal stream flow or level variations, natural events, and pollution from natural sources that occurs independent of human activities;

(3) An examination of the legally established characteristic uses of each of the nonmarine bodies of water in the management area;

(4) An examination of any total maximum daily load established for nonmarine bodies of water in the management area, unless a total maximum daily load process has begun in the management area as of the date the watershed planning process is initiated under RCW 90.82.060;

(5) An examination of existing data related to the impact of fresh water on marine water quality;

(6) A recommended approach for implementing the total maximum daily load established for achieving compliance with water quality standards for the nonmarine bodies of water in the management area, unless a total maximum daily load process has begun in the management area as of the date the watershed planning process is initiated under RCW 90.82.060; and

(7) Recommended means of monitoring by appropriate government agencies whether actions taken to implement the approach to bring about improvements in water quality are sufficient to achieve compliance with water quality standards.

This chapter does not obligate the state to undertake analysis or to develop strategies required under the federal clean water act (33 U.S.C. Sec. 1251 et seq.). This chapter does not authorize any planning unit, lead agency, or local government to adopt water quality standards or total maximum daily loads under the federal clean water act. [1998 c 247 § 5.]

RCW 90.82.100 Habitat component. If the initiating governments choose to include a habitat component, the watershed plan shall be coordinated or developed to protect or enhance fish habitat in the management area. Such planning must rely on existing laws, rules, or ordinances created for the purpose of protecting, restoring, or enhancing fish habitat, including the shoreline management act, chapter 90.58 RCW, the growth management act, chapter 36.70A RCW, and the forest practices act, chapter 76.09 RCW. Planning established under this section shall be integrated with strategies developed under other processes to respond to potential and actual listings of salmon and other fish species as being threatened or endangered under the federal endangered species act, 16 U.S.C. Sec. 1531 et seq. Where habitat restoration activities are being developed under chapter 246, Laws of 1998, such activities shall be relied on as the primary nonregulatory habitat component for fish habitat under this chapter. [1998 c 247 § 6.]

RCW 90.82.110 Identification of projects and activities. The planning unit shall review historical data such as fish runs, weather patterns, land use patterns, seasonal flows, and geographic characteristics of the management area, and also review the planning, projects, and activities that have already been completed regarding natural resource management or enhancement in the management area and the products or status of those that have been initiated but not completed for such management in the management area, and incorporate their products as appropriate so as not to duplicate the work already performed or underway.

The planning group is encouraged to identify projects and activities that are likely to serve both short-term and long-term management goals and that warrant immediate financial assistance from the state, federal, or local government. If there are multiple projects, the planning group shall give consideration to ranking projects that have the greatest benefit and schedule those projects that should be implemented first. [1998 c 247 § 7.]

RCW 90.82.120 Plan parameters. (1) Watershed planning developed and approved under this chapter shall not contain provisions that: (a) Are in conflict with existing state statutes, federal laws, or tribal treaty rights; (b) impair or diminish in any manner an existing water right evidenced by a claim filed in the water rights claims registry established under chapter 90.14 RCW or a water right certificate or permit; (c) require a modification in the basic operations of a federal reclamation project with a water right the priority date of which is before June 11, 1998, or alter in any manner whatsoever the quantity of water available under the water right for the reclamation project, whether the project has or has not been completed before June 11, 1998; (d) affect or interfere with an ongoing general adjudication of water rights; (e) modify or require the modification of any waste discharge permit issued under chapter 90.48 RCW; (f) modify or require the modification of activities or actions taken or intended to be taken under a habitat restoration work schedule developed under chapter 246, Laws of 1998; or (g) modify or require the modification of activities or actions taken to protect or enhance fish habitat if the activities or actions are: (i) Part of an approved habitat conservation plan and an incidental take permit, an incidental take statement, a management or recovery plan, or other cooperative or conservation agreement entered into with a federal or state fish and wildlife protection agency under its statutory authority for fish and wildlife protection that addresses the affected habitat; or (ii) part of a water quality program adopted by an irrigation district under chapter 87.03 RCW or a board of joint control under chapter 87.80 RCW. This subsection (1)(g) applies as long as the activities or actions continue to be taken in accordance with the plan, agreement, permit, or statement. Any assessment conducted under RCW 90.82.070, 90.82.090, or 90.82.100 shall take into consideration such activities and actions and those taken under the forest practices rules, including watershed analysis adopted under the forest practices act, chapter 76.09 RCW.

(2) Watershed planning developed and approved under this chapter shall not change existing local ordinances or existing state rules or permits, but may contain recommendations for changing such ordinances or rules.

(3) Notwithstanding any other provision of this chapter, watershed planning shall take into account forest practices rules under the forest practices act, chapter 76.09 RCW, and shall not create any obligations or restrictions on forest practices additional to or inconsistent with the forest practices act and its implementing rules, whether watershed planning is approved by the counties or the department. [1998 c 247 § 8.]

RCW 90.82.130 Plan approval--Public notice and hearing--Revisions. (1)(a) Upon completing its proposed watershed plan, the planning unit may approve the proposal by consensus of all of the members of the planning unit or by consensus among the members of the planning unit appointed to represent units of government and a majority vote of the nongovernmental members of the planning unit.

(b) If the proposal is approved by the planning unit, the unit shall submit the proposal to the counties with territory within the management area. If the planning unit has received funding beyond the initial organizing grant under RCW 90.82.040, such a proposal approved by the planning unit shall be submitted to the counties within four years of the date that funds beyond the initial funding are first drawn upon by the planning unit.

(c) If the watershed plan is not approved by the planning unit, the planning unit may submit the components of the plan for which agreement is achieved using the procedure under (a) of this subsection, or the planning unit may terminate the planning process.

(2)(a) The legislative authority of each of the counties with territory in the management area shall provide public notice of and conduct at least one public hearing on the proposed watershed plan submitted under this section. After the public hearings, the legislative authorities of these counties shall convene in joint session to consider the proposal. The counties may approve or reject the proposed watershed plan for the management area, but may not amend it. Approval of such a proposal shall be made by a majority vote of the members of each of the counties with territory in the management area.

(b) If a proposed watershed plan is not approved, it shall be returned to the planning unit with recommendations for revisions. Approval of such a revised proposal by the planning unit and the counties shall be made in the same manner provided for the original watershed plan. If approval of the revised plan is not achieved, the process shall terminate.

(3) The planning unit shall not add an element to its watershed plan that creates an obligation unless each of the governments to be obligated has at least one representative on the planning unit and the respective members appointed to represent those governments agree to adding the element that creates the obligation. A member's agreeing to add an element shall be evidenced by a recorded vote of all members of the planning unit in which the members record support for adding the element. If the watershed plan is approved under subsections (1) and (2) of this section and the plan creates obligations: (a) For agencies of state government, the agencies shall adopt by rule the obligations of both state and county governments and rules implementing the state obligations, the obligations on state agencies are binding upon adoption of the obligations into rule, and the agencies shall take other actions to fulfill their obligations as soon as possible; or (b) for counties, the obligations are binding on the counties and the counties shall adopt any necessary implementing ordinances and take other actions to fulfill their obligations as soon as possible.

(4) As used in this section, "obligation" means any action required as a result of this chapter that imposes upon a tribal government, county government, or state government, either: A fiscal impact; a redeployment of resources; or a change of existing policy. [2001 c 237 § 4; 1998 c 247 § 9.]

NOTES:

Finding--Intent--Severability--Effective date--2001 c 237: See notes following RCW 90.82.040.

Intent--2001 c 237: See note following RCW 90.66.065.

RCW 90.82.140 Use of monitoring recommendations in RCW 77.85.210. In conducting assessments and other studies that include monitoring components or recommendations, the department and planning units shall implement the monitoring recommendations developed under RCW 77.85.210. [2001 c 298 § 2.]

NOTES:

Finding--Intent--2001 c 298: See note following RCW 77.85.210.

RCW 90.82.900 Part headings not law--1997 c 442. As used in this act, part headings constitute no part of the law. [1997 c 442 § 803.]

RCW 90.82.901 Severability--1997 c 442. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1997 c 442 § 805.]

RCW 90.82.902 Captions not law--1998 c 247. As used in this act, captions constitute no part of the law. [1998 c 247 § 15.]

Appendix B

Water Resources District Proposal

It is proposed that the legislature authorize a new optional special purpose “Water Resource District” (WRD). The following would apply:

General Provisions

- a. Boundaries same as WRIA,
- b. Can be formed only by a vote of the people living in the WRIA
- c. Board of WRD would be compiled of existing elected officials such as, County Commissioners, City Council Members, PUD Commissioners, Port District Commissioners, Water and Sewer District Commissioners, or their representatives, and
- d. Continued use of citizen advisory groups, such as the existing watershed planning units.

General Powers

- a. Have General taxing authority,
- b. Long-term water resource planning, including long-term research and monitoring,
- c. Employ water masters,
- d. Fund Water Conservancy Board administrative functions,
- e. Operate a Trust Water Rights Bank (www.thewatertrust.org),
- f. Operate a Water Supply Bank (see Idaho Water Resource Board Authority – www.idwr.state.id.us/waterboard), and
- g. Public education on water resource issues.

Optional Powers

- a. Optional powers can be authorized only by a vote of the people living in the WRIA,
- b. 2514 Watershed Plan Implementation,
- c. Fund and build water quantity and quality projects,
- d. Purchase conservation easements,
- e. Streamflow augmentation projects,
- f. Initiate a streamlined adjudication process (funding shared with state) within its watershed,
- g. Make municipal water rights independent from instream flows,
- h. Approve interties within watershed,
- i. Set instream flows, and
- j. Require metering and reporting of all or a portion of the water users.

Appendix C

Committee Discussion of State Water Law and Related Issues

During the course of the Phase 4 Watershed Plan Implementation Committee's work, potential modifications to State water law and related issues were discussed several times. This Appendix summarizes the discussion held in regards to State water law at each of the Committee's meetings from April through September 2002.

In initial meetings, this was identified as one of approximately six topics to be addressed. However, as the Committee progressed, other issues such as funding needs and coordination and management of watershed plans absorbed much of the Committee's discussion time. Consequently, suggested modifications to State law were not developed in depth. Some individual Committee members suggested specific changes with respect to modifying the State's water law. However, these proposals were not formally acted on by the Committee.

(Note: this appendix does not address suggested changes to Chapter 90.82 RCW, which covers the watershed planning program itself. This chapter in State law was discussed much more extensively, and these suggested changes are incorporated in various sections of the report.)

April 2, 2002 Meeting

Discussion Between Committee Members and Tom Fitzsimmons

Tom Fitzsimmons, Director of the Department of Ecology offered introductory remarks at the first meeting to launch the Committee's process. Among many other questions/answers during this portion of the meeting, the following item was discussed:

Q: Many management actions could potentially conflict with current statutes. Statutes need to be changed for management to be effective. Is that consistent with Ecology's view?

A: Yes. Statutes may need to be changed. This was also the intent of the effort undertaken during the past Legislative Session. This Committee can provide guidance on changes that are needed in State law to support implementing watershed plans.

Scope and Activities for Committee Activities

During this portion of the meeting, a long list of items was "brainstormed" for consideration by the Committee. Those items related to State laws are listed below:

1.) Comments from Committee Members

- Allow ground water to be used in mitigation

- How do you implement enforcement (Current statutes are not being enforced because of political pressure)
- Explore idea of creating authority in state law for a new type of special purpose district, defined within the WRIA boundaries and with the responsibility to handle watershed implementation (this would be an option, if the locals wanted).
- Conflicts in legal authorities
- Identify changes needed in state law

2.) Comments by Others Present (not Committee members)

- Need to identify specific changes in the state water code.
- One idea: a requirement that any project listed in a watershed plan have a requirement for “regional coordination.” To ensure it fits with regional priorities and actions being undertaken by other entities in the area.

Following this discussion, all the issues brainstormed were grouped into six categories for further work by the Committee. One of these categories was “Statutes/Regulations.”

During the meeting it was also noted that there are various sources of information that can be “mined” by the Committee. One example is the documentation of the joint executive/legislative process to develop water legislation for the 2002 Legislative Session.

May 9, 2002 Meeting

Status of Legislative Proposals to Amend Water Code and Related Statutes (Presented by Guest – Keith Phillips, Dept. of Ecology)

Keith Phillips gave a presentation on the Governor’s Water Strategy, and answered questions from committee members.

Develop Approach to Key Issues:

Eight “key issues” were discussed at the meeting. One of these was Rules and Ordinances. The following comments were made:

- Water Code
 - ◆ Would be very consuming for committee to try to propose amendments
 - ◆ Limit time on this, to achieve other priorities?
 - ◆ Give local Planning Units ability to achieve “local fixes”?
- Some specific issues in State law that may warrant review by Committee:
 - ◆ Use of interties to serve growth – change prohibition on this in State law
 - ◆ Relinquishment
 - ◆ Exempt wells

- ◆ Stock watering
- ◆ Wellhead inspections
- ◆ Stormwater – new element, so will be a lot of attention
- ◆ Linkage of watershed plans to comprehensive land use plans
 - Shorelines
 - (Note how this relates to water resource district idea – possible disconnect between land use planning and water resource planning)

Committee Listed Follow-up Actions on State Rules

Review provisions that may impede implementation of watershed plans, but “be disciplined” since this could take up more Committee time and staff resources than the Committee has available. Committee Members were requested to e-mail committee staff the top three issues needing consideration by the Committee, involving State Law.

June 13, 2002 Meeting

State law was not one of the main topics on the agenda for this meeting. However, staff displayed an overhead listing the topics that Committee members have suggested, including previous discussions, and emails received from Committee members after the last meeting. These topics are:

- Certainty of water rights
- Interties
- Change of place of use
- Exempt well provisions; and relation to annexation issues;
- Allow use of interties to serve growth
- Uncertainty as to extent and validity of existing water rights, especially water rights associated with public water systems serving growing or developing communities;
- Need for an accurate, up-to-date record of the valid water rights currently in use
- Inconsistent application of laws related to water rights changes, which frustrates efficient use and effective management of the resource
- Lack of specific, scientifically based guidance on instream flow setting
- Lack of consistent, scientifically based interpretation and application of the “hydraulic continuity” concept for purposes of water rights changes and resource management;
- Relinquishment
- Exempt wells
- Stock watering
- Wellhead inspections
- Stormwater

- Linkage of watershed plans to comprehensive land use plans
 - ◆ Shorelines
 - ◆ Avoid inefficient use of the resource by adjacent entities

The Committee decided that members who suggested each topic should provide written discussion as to how each of these topics relate to implementation of watershed plans. They should provide a brief written description of the statute or rule of interest; the citation to state code or rule number; and an explanation of how that statute or rule affects implementation of watershed plans. This information should be provided in a format suitable for circulation to the rest of the Committee. This will then provide the basis for discussion of statutes and rules at the next meeting.

There was continued discussion as to how the Committee can best manage this issue, given the complexity of water law. The general consensus seemed to be that we should focus on issues that are most directly related to implementation of watershed plans, rather than more “global” issues involving the state water code.

July 25, 2002 Meeting

Committee Suggestions for Amending State Law

The committee briefly reviewed the suggestions emailed out by Committee members. These included:

Item received from two Committee members jointly:

- Uncertainty as to the extent and validity of existing water rights, especially water rights associated with public water systems serving growing or developing communities; and the failure of the state to have and maintain an accurate, up-to-date record of the valid water rights currently in use.
- The inflexibility and inconsistent application of laws related to water rights changes, which frustrates efficient use and effective management of the resource.
- The lack of specific scientifically based guidance on instream flow setting and a consistent, scientifically-based interpretation and application of the “hydraulic continuity” concept for purposes of water rights changes and resource management.

Item received from another Committee member:

- Suggested additional language for RCW 90.03.380, dealing with the transfer of water rights from private exempt wells to public systems. Suggestion was that this applies to watershed plan implementation because it relates to local policy makers’ ability to manage water quality and quantity within their watersheds. In one example given, a PUD is limited from providing service to a UGA because of a water right shortage that would be diminished by this statutory change. Committee member suggested that a number of the watershed plans from around the state will stress public systems over private wells and this statutory change will facilitate that policy.

The proposed language for RCW 90.03.380 is:

- (7) Notwithstanding any other provisions of this section, Municipal water systems and water systems operated by Public Utility Districts shall be entitled to an increase of 2000 gallons per day in their appropriated groundwater right for each and every private exempt well, pursuant to RCW 90.44.050, used for domestic water supply, that is replaced by service from the municipal or PUD water supply. To qualify for this increase in water right, the following conditions must be met:
- (a) The Municipal or PUD water system must have an existing valid water right for groundwater appropriation from which water is being purveyed for domestic water supply.
 - (b) The exempt well that is being replaced by municipal or PUD service must be decommissioned within 90 days of commencement of the public water service.
 - (c) The municipal or PUD water system must be in compliance with applicable water system design and operating requirements.

Most of the Committee's discussion centered on the latter suggestion that municipal water systems that take on customers formerly served by exempt wells should be able to get an incremental increase in their water rights.

Other discussion points:

- Handle state law in "layers." First, explore whether existing state law is sufficient to allow for implementation of watershed plans. Second, send signal that state water law is "broken" in terms of managing water.
- Could pilot projects be set up, to experiment with code changes in selected areas of the state? Avoids need for a comprehensive overhaul of the water code.
- Idea of a "watershed code." Special provisions and flexibility for managing water, in basins that have adopted watershed plans.

August 29, 2002 Meeting

In its discussion of key priorities for developing the Committee Report, the Committee did not identify state statutes and rules as a priority. Instead, funding issues and coordination and oversight during the implementation process were identified as priorities for further action by the Committee.

September 26, 2002 Meeting

At this meeting, the Committee's recommendations on a range of topics were discussed. It was determined that the discussion of State Law held through the course of the Committee's work would be placed in an Appendix to the report. While some interesting ideas have been raised, this has not turned out to be a central focus of the Committee's work.

Appendix D

Details about Representative Projects and Programs

The following are descriptions of the representative projects and programs found in Table 2-2, including the assumptions made for each cost calculation. All costs were adjusted to represent 2002 dollars.

Conservation Programs

■ Municipal and industrial

The City of Bremerton employs 1/3rd full time equivalent (FTE) to implement four programs. The City of Tacoma employs one and a half FTE and implements approximately 10 programs and actively participates in local, regional, state, and interstate conservation committees and workgroups.

Assumptions Fifteen small programs (the size of Bremerton's program) and four large programs (the size of Tacoma's program) will be implemented throughout the state.

■ Irrigation districts

Irrigation districts in the Yakima River Basin Watershed proposed water use efficiency projects and associated costs as documented in the YRBWEP's technical memorandum titled "Water Use Efficiency in Agriculture". The median cost for these projects is \$18 million.

Assumptions The Yakima River Basin represents a "large" project. Smaller projects assumed to be two-thirds of the scope and cost. On going costs assumed to be 5% of the total capital costs.

■ On-Farm

Conversion of a gravity irrigation system to a pressurized irrigation system is the primary "on-farm" conservation project considered.

Assumptions The industry standard cost per acre for this conversion is \$1,000. 150 such projects would be implemented. 75 would convert 250 acres and 75 would convert 1,000 acres. On-going costs estimated at 15% of capital costs due to power costs for pumping and system maintenance.

Management and Transfers

■ Voluntary transfers of water rights—sales

In 2001, the Department of Ecology purchased water rights in the Walla Walla basin at the approximate costs and volume specified in the "large" column of Table 3-1A. The "small" column represents projects 10 times smaller than the "large" project.

Assumptions Water purchased at \$600 per acre feet. There are 60 sales total over the 10 year period. No on-going costs assumed.

■ Voluntary transfers of water rights—leases

Assumptions Using the cost of the Walla Walla water rights sales, it is estimated also that leased water rights are generally 1/10th of the cost to purchase water rights. It is estimated that each lease terminates within one year and there are only 60 sales total over the 10 year period. No on-going annual costs assumed.

■ Adjudication of basin

Assumptions The adjudication process in the Yakima River Basin costs an average of \$1 million per year. 2 other adjudications will also cost this much and last 10 years.

■ Watermaster or similar

A watermaster will enforce water rights and identify rights subject to relinquishment. Currently, there exist only about six watermasters throughout the state.

Assumptions Watershed plans to recommend hiring three part time watermasters and five full time water masters in a total of 8 WRIA's. Capital costs include a vehicle (\$15,000) and office supplies (\$5,000). Wages and benefits amount to \$50,000 per year with \$5,000 in on-going costs to maintain the program.

■ Replace private wells with public system connections

According to the previous manager at Skagit County PUD, the PUD replaced about 100 miles of pipeline per year and represents a feasible amount of pipe for a utility to install. Due to the Growth Management Act, municipalities may not extend water service to areas outside their growth boundary, which is where many exempt wells are found. PUD's are exempt from this rule. Another factor which diminishes the effectiveness of this action of replacing private wells is that homeowners will bear the brunt of the cost. It is unlikely many homeowners will be interested in replacement unless the cost is less than the cost to maintain and repair their wells.

Assumptions Replacement to occur in rural areas with one connection every ¼ mile. 10 utilities will install 100 miles of pipe over the 10 year period. Capital costs include pipe installation costs at industry standard \$8/inch diameter/foot. Each connection costs \$1,158 (City of Cheney SDC). On-going costs at \$288 per connection for the utility (City of Cheney estimate). Does not include any costs to upgrade the water system, such as new capacity at treatment plant.

■ Restrict new well depth to second unit aquifer or less

Cost of drilling set to industry standard cost estimate.

Assumptions Each year at each of the 10 participating utilities, 150 new residential wells drilled 50 feet deeper to reach second aquifer at \$160 per foot to drill.

■ Alter operations of existing storage facilities

Three dams on the Skagit River owned by Seattle City Light monitors the health of the anadromous fish population down river and adjust water flow accordingly.

Assumptions 10 similar projects will be recommended by watershed plans throughout the state.

■ Construct and operate reclamation and reuse facilities

Projects at Ephrata, Yelm, and Sequim average 1 mgd capacity and cost an average of \$8.8 million. These represent a “small” project. A “large” project is one which is ten times the size and cost.

Assumptions Watershed plans will recommend that 5 municipalities each will construct and operate 1 mgd facility and 3 will construct and operate a 10mgd facility each. On-going costs based on estimated O & M costs for the City of Bremerton’s feasibility which was never constructed.

■ New well construction

Well drilling costs vary significantly, so an industry standard cost was used.

Assumptions Calculation does not include the cost to purchase land. On-going costs assumed to be 15% of capital costs.

■ New stream diversions

Lake Kachess was augmented with new stream flow to increase Kachess reservoir capacity.

Assumptions Nominal on going costs.

■ New or upgraded surface storage (off channel)

Judy Reservoir capacity was increased by 1 MG by increasing the heights of the front and back earthen dams by 10 feet.

Wymer Reservoir is a proposed new storage project in a side canyon of the Yakima River. It would involve pumping water from the river into the reservoir during high flow periods. The reservoir size is 142,000 acre feet.

■ Aquifer storage recharge

The City of Walla Walla is currently obtaining water rights in order to construct two wells, both capable of producing up to 4,900 gpm.

Assumptions Costs include pilot well costs and process to obtain water rights. On-going costs estimated at 10% of capital costs due to high power costs.

■ New pipelines or interties

The Joint Water Commission is located in west metro Portland, Oregon and constructed a 42” line approximately 6.5 miles in length.

Assumptions Costs include land purchases and construction of pipe. 10 similar projects will occur in Washington.

Water Quality

■ Assist private industries improve wastewater discharge –

A “small” project, as defined for this cost estimation, involves providing assistance to upgrade industries water treatment plants or operations to reduce wastewater discharge. A “large” project involves assisting an industry in replacing an existing treatment facility with a new one. There is a wide range of industrial facilities in Washington requiring wastewater treatment for various chemical and physical parameters and treating various quantities. All of these issues affect the cost of a new treatment plant or upgrade. A new wastewater treatment facility for a large industry can be as much as \$20,000,000 (based on information provided by Water Environment Federation - WEF). Small upgrades could be highly variable in cost. A relatively small improvement could cost as low as \$25,000; while other improvements could be much higher.

■ Improve municipal wastewater discharge quality –

This action will improve water quality by upgrading or replacing municipal wastewater treatment plants. The cost associated with replacing aging equipment and structures to the City of Enumclaw’s wastewater treatment plant was used for a “small” project example. The “large” project example used in this table is the construction of a new wastewater treatment plant for the City of Centralia.

■ Increase inspections of dairies and enforcement of regulations –

The project costs for this action are based on the Department of Ecology’s current dairy inspection program which involves water quality monitoring, enforcement and dairy assistance. Ecology staff estimated the total annual and ongoing costs of one full time dairy inspector. The “small” program increases the number of current dairy inspectors by 3 FTEs statewide and a “large” program would increase the number of current dairy inspectors by 6 FTEs statewide.

■ Monitor, assist and enforce farm practices –

The costs developed for this action were based on the Sunnyside Irrigation District water quality monitoring and enforcement program, which requires 2 FTEs, and a water quality lab. Water quality is tested at farm discharge or runoff locations and property owners are assisted to help bring the farm into compliance. It is assumed that a “large” program would carry out similar activities to a “small” program but require 2 additional FTEs totaling 4 FTEs.

■ Capital projects –

There are a wide range of capital projects that could be constructed to improve water quality. The small project example used in this table is the tight lining of a ditch and construction of a re-regulating reservoir to improve water quality in the Dungeness River. The “large” project

example involves abandoning 13 miles of logging roads and upgrading and adding drainage structures along nine miles of logging roads to reduce sedimentation in the North Fork Nooksack.

■ Public Education Program –

The Bellingham Stream Management and Education Project was used in this table as an example of a community level program which assisted in comprehensive watershed planning, project implementation, and educational programs to control nonpoint pollution in two urban watersheds. The costs for a large or county level education program were assumed to be twice as much as a small program.